IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 1 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CONTROLLER OF ESTATE DUTY

Versus

KANTILAL CHIMANLAL

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Appearance:
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 22/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the Controller of Estate Duty,

Gujarat-II, Ahmedabad, the Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following question of law for opinion of the High Court :-

"Whether, on the facts and in the circumstances of the case, the Tribunal has been right in law in holding that valuation of the residential property of the deceased named as `Srikunj' should be done in accordance with Rule 1-BB of the Wealth-tax Rules, 1957 ?"

FACTS :

2. Smt. Kanchanben Sarabhai died on January 4, 1968. The deceased owned residential property at Navrangpura known as `Srikunj'. The accountable person had disclosed the value of the said property at Rs.1,21,260/- as per the valuation report of the registered valuer. However, the Assistant Controller of Estate Duty determined the value of the residential property at Navrangpura at Rs.1,76,000/after giving exemption under Section 33(1)(a) of the Estate Duty Act. While determining the value of the property, the Assistant Controller of Estate Duty observed that the valuation was made on rental method and the valuation report of the registered valuer was not acceptable. Feeling aggrieved, the accountable person carried the matter in appeal before the Controller of Estate Duty (Appeals) and contended that as the value of the said property was adopted to be Rs.1,21,360/- in wealth-tax proceedings, the property could not have been valued at Rs.1,76,000/- after giving exemption under Section 31(1)(a) of the Estate Duty Act. The contention raised by the accountable person that the value of the property adopted for the purpose of wealth-tax should be adopted for the purpose of estate duty was negatived by the Controller of Estate Duty (Appeals) holding that such an argument militates against express provisions of section 36 of the Estate Duty Act but the Appellate Authority placing reliance on decision of Mysore High Court in case of CED vs. J.K. Krishnamurthy, 96 ITR 87 accepted the submission made on behalf of the accountable person that the valuation should be done in accordance with Rule 1-BB of the Wealth Tax Rules and accordingly determined the value of the property at Rs.1,39,000/-. Being aggrieved, the revenue preferred an appeal before the Income-tax Appellate Tribunal, Ahmedabad Bench "C" and contended that Rule 1-BB of the Wealth Tax Rules was brought into force with effect from April 1, 1979 and, therefore, principle laid down therein could not have been made applicable retrospectively to the facts of the present

case when death of Smt. Kanchanben had occurred in the year 1968. It was pleaded that the valuation of the building as determined by the Estate Officer should be restored. The Tribunal held that Rule 1-BB of the Wealth-tax Rules is retrospective in operation and, therefore, the grievance made by the revenue has no substance. In that view of the conclusion, the Tribunal dismissed the appeal and at the instance of the Controller of Estate Duty, the Tribunal has referred the question of law quoted above for our opinion.

3. Mr Akil Kureshi, learned counsel for the revenue pleaded that the basis of valuation provided under Wealth Tax Rules in the case of a residential property should not be adopted to arrive at the market value of the same under the Estate Duty Act. The learned counsel referred to section 36(1) & (2) of the Estate Duty Act, 1953 and in the alternative submitted that Section 36(3) of the Estate Duty Act was brought into force with effect from March 1, 1981 which is prospective in operation and, therefore, in cases where the death took place prior to March 1, 1981 the Assistant Controller of Estate Duty was within his rights in adopting any appropriate method for valuing the property without being tied down by the valuation of the same property made under the Wealth-tax Act.

4. Though served, none appears on behalf of the respondent.

In order to resolve the controversy raised in the reference, it would be advantageous to refer to provisions of Section 36 of the Estate Duty Act, 1953.

"36. Principal value how to be estimated. - (1) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased's death.

(2) In estimating the principal value under this section the Controller shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the

satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the principal value of one residential house or part thereof belonging to the deceased (which the accountable person may at his option specify in writing in this behalf) shall be -

(a) where the value of such house or part is included in computing the net wealth of the deceased for the purpose of making an assessment under the Wealth-tax Act, 1957 (hereafter in this sub-section referred to as the Wealth-tax Act) in respect of his net wealth on the valuation date immediately preceding the date of his death, the value as taken by the Wealth-tax Officer for the purposes of such assessment; and

(b) in any other case, the value of such house or part,-

(i) on the said valuation date; or
(ii) where such house or part was constructed, acquired or otherwise became the property of the deceased after the said valuation date, on the date of his death,

as determined by the Controller in accordance with the provisions of the Wealth-tax Act and the rules made thereunder; and, for this purpose, in a case where the provisions of sub-section (4) of section 7 of that Act apply, the provisions of that sub-section shall have effect as if the words "throughout the period of twelve months immediately preceding the valuation date", occurring therein, had been omitted and as if the references therein to the option of the assessee had been references to the option of the accountable person.

Explanation 1 . - ... ... ... ...

Explanation 2 . - ... ... ... ..."

From the above quoted provisions of law, it is evident that the principal value of any property has to be estimated to be the price which it would fetch if sold in market at the time of deceased's death. But sub-section (3) of Section 36 which starts with non-obstante clause and overrides sub-sections (1) and (2) of Section 36 provides that the principal value of one residential house or part thereof belonging to the deceased shall be where the value of such house or part is included in computing the net wealth of the deceased for the purpose of making an assessment under the Wealth-tax Act, 1957 in respect of his net wealth on the valuation date immediately preceding the date of his death, the value as taken by the Wealth-tax Officer for the purposes of such assessment. We may observe that sub-section (3) of Section 36 was inserted by the Estate Duty (Amendment) Act (31 of 1982) with effect from March 1, 1981, but from provisions of Section 36(3) it is manifest that the concept of market value which is the basis of assessment is the same both under the Wealth-tax Act and Estate Duty Act and, therefore, the value adopted for the assessment under the Wealth-tax Act cannot be different from the value estimated for the purpose of assessment under the Estate Duty Act. The value adopted of the said property in the assessment for the assessment year 1968-69 under the Wealth-tax Act was Rs. 1,21,360/only. The death of Smt. Kanchanben Sarabhai occurred within two years from the valuation date relating to assessment year 1968-69 and as there was no development during this period which would have enhanced the value of the property, the market value as estimated in the wealth-tax assessment should be adopted for estate duty assessment also.

6. The contention that in any view of the matter, Rule 1-BB was introduced in the Wealth-tax Rules, 1957 with effect from April 1, 1979 and section 36(3) of Estate Duty Act was brought into force with effect from March 1, 1981 whereas the death of deceased Kanchanben took place on January 4, 1968 and, therefore, the valuation method prescribed by Rule 1-BB in the Wealth-tax Rules, 1957 could not be invoked by the accountable person is devoid of merits.

7. In Commissioner of Wealth-Tax vs. Sharvan Kumar Swarup & Sons, (1994) 210 ITR 886, the Supreme Court has examined scope of Rule 1-BB of Wealth Tax Rules as well as its retrospective applicability and held as under :-

"Rule 1BB of the Wealth-tax Rules, 1957, which came into force on April 1, 1979, prescribing the method for valuing a house wholly or mainly used for residential purposes, merely provides a choice amongst well-known and well-settled modes of valuation. Even in the absence of rule 1BB, it would not have been objectionable, nor would there have been any legal impediment, to adopt the mode of valuation embodied in rule 1BB, namely, the method of capitalization of income on a number of years' purchase value. The rule was intended to impart uniformity in valuation and to avoid vagaries and disparities resulting from application of different modes of valuation in different cases where the nature of the property is similar.

Rule 1BB partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognized and accepted methods. The rule is procedural and not substantive and is application to all proceedings pending on April 1, 1979, when the rule came into force.

Procedural law, generally speaking, it applicable to pending cases. No suitor can be said to have a vested right in procedure."

In view of the above referred to dictum of the Supreme Court, the contention that Rule 1-BB is not retrospective in operation cannot be accepted. It is true that section 36(3) of Estate Duty Act was brought into force with effect from March 1, 1981 but in view of interpretation placed by the Supreme Court on Rule 1-BB of Wealth Tax Rules in Sharvan Kumar's case (Supra) it will have to be held that Section 36(3) of Estate Duty Act contemplates a method of valuation and being procedural in nature is retrospective in operation and applicable to pending cases.

7. In view of the above discussion, we are of the opinion that the Tribunal was right in holding that value of the residential property of the deceased named as `Srikunj' should be done in accordance with Rule 1-BB of the Wealth-tax Rules, 1957.

The reference is accordingly answered in the affirmative i.e. in favour of the assessee and against

the revenue. The reference stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

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